

U.S. Department of Labor

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Issue Date: 26 February 2003

Case No.: 2002-LHC-1676

OWCP No.: 08-120055

In the Matter of:

**EFRAIN CANDANOZA, JR.,
Claimant**

v.

**PORT FABRICATORS, INC.,
Employer**

and

**AMERICAN HOME ASSURANCE COMPANY,
Carrier**

APPEARANCES:

**JACK CARINHAS, JR., ESQ.,
On Behalf of the Claimant**

**KEITH UHLES, ESQ.,
On Behalf of the Employer/Carrier**

**BEFORE: RICHARD D. MILLS
Administrative Law Judge**

DECISION AND ORDER – DENYING BENEFITS

This proceeding involves a claim for benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901, et seq., (the "Act" or "LHWCA"). The claim is brought by Efrain Candanoza, Jr., Claimant, against Port Fabricators, Inc., ("Port Fabricators") and American Home Assurance Co., Respondents. Claimant asserts he suffered an employment-related injury to his left knee for which Port

Fabricators is responsible. A hearing was held on January 16, 2003 in Brownsville, Texas, at which time the parties were given the opportunity to offer testimony, documentary evidence, and to make oral argument. The following exhibits were received into evidence:

- 1) Joint Exhibit 1;
- 2) Claimant's Exhibits Nos. 1-7; and
- 3) Respondent's Exhibits Nos. 1-9.

This decision is being rendered after giving full consideration to the entire record.¹

STIPULATIONS²

The Court finds sufficient evidence to support the following stipulations:

- 1) This case is governed by the LHWCA.
- 2) Claimant was employed as a welder/maintenance worker on the dry dock at Amfels Shipyard in Brownsville, Texas.
- 3) There was an employer/employee relationship between Claimant and Respondent at the time of his alleged work-related accident.
- 4) A Notice of Controversion was filed on April 10, 2002.
- 5) An Informal Conference was held on March 4, 2002.
- 6) Claimant's average weekly wage at the time of his injury was \$350.00.

¹ The following abbreviations will be used in citations to the record: JX - Joint Exhibit, CX - Claimant's Exhibit, RX - Respondent's Exhibit, and TR - Transcript of the Proceedings.

² JX-1.

ISSUES

The unresolved issues in these proceedings are:

- (1) Fact of Injury and Causation;
- (2) Nature and Extent of Disability;
- (3) Reasonable and Necessary Medical Benefits; and
- (4) Attorney's Fees.

SUMMARY OF THE EVIDENCE

I. TESTIMONY

Efrain Candanoza

Mr. Candanoza was born on July 14, 1972. TR. 30. In May 2001, Mr. Candanoza was employed by Port Fabricators as a welder helper and maintenance worker. TR. 32-33; JX-1. Although Mr. Candanoza was employed by Port Fabricators, all the work he performed was for Amfels Shipyard ("Amfels") and he was directed by Amfels supervisors. TR. 75.

On May 8, 2001, while visiting friends in Matamoras, Mr. Candanoza was involved in a car accident in which he injured his leg. TR. 64, 72. Mr. Candanoza testified that he was riding in the right side of the back seat when the accident occurred. TR. 72-73. He testified that the other car drove off. TR. 72. Following the accident, Mr. Candanoza went to see Dr. Oscar Portinas in Matamoras, where he was given a pain shot and pain killers. TR. 65. Later that same day, Mr. Candanoza went to Brownsville Medical Center ("BMC") for treatment. TR. 65-66. He was given x-rays and pain shots and then released back to work for Monday, May 14, 2001. TR. 66.

Mr. Candanoza testified that he did not injure his left knee in the car accident. TR. 73-74, 80-81. Mr. Candanoza testified instead that he injured his leg near his hip and his ankle. TR. 74. However, on cross-examination, Mr. Candanoza was shown BMC medical records from May 8, 2001 indicating that he had twisted his knee while walking and that his chief complaint was pain in his left knee. TR. 82-83. Mr. Candanoza then admitted he gave BMC inaccurate information, explaining that he was worried BMC would not treat him because the car accident occurred in Matamoras. TR. 82-84. Although Mr. Candanoza

admitted he told BMC that he twisted his knee while walking, he maintained that he had hurt his leg, not his knee. TR. 84-85.

Mr. Candanoza testified that the emergency room doctor at BMC examined his left knee, took x-rays, and fitted him with a left knee immobilizer. TR. 86. Mr. Candanoza testified that the doctor told him he should follow up with an orthopedic surgeon. TR. 86. However, Mr. Candanoza did not follow up with an orthopedic surgeon. TR. 87.

Mr. Candanoza testified that he reported the accident to Amfels and returned to work on Monday, May 14, 2001. TR. 67, 87. He resumed his regular duties and worked through Wednesday, May 16th. TR. 67-68, 87. Mr. Candanoza testified that he went back to BMC for a check-up on Thursday, May 17th, and got another slip to be off work until the following Monday, May 21st. TR. 36-37, 68, 88-89. According to Mr. Candanoza, the doctor did not want him to work on Friday, May 18th. TR. 89.

Mr. Candanoza testified that when he returned to work on May 21st, he showed the BMC medical release to James Read, Amfels' safety manager. TR. 37, 130. Mr. Candanoza testified that Mr. Read directed him to see Hilberto Elizondo in the human resources department of Amfels. TR. 37. Mr. Candanoza testified that he was asked by Mr. Elizondo to do knee bends as a test to determine whether he was truly fit to return to work. TR. 38-39. After doing the knee bends for Mr. Elizondo, Mr. Candanoza was sent to the dry dock for his regular work. TR. 39, 68.

Mr. Candanoza testified that he worked May 21st, 22nd, 23rd, and 24th without any difficulty at all with his knee. TR. 39, 69. Mr. Candanoza testified that on either May 24th or May 25th, he sustained an injury to his left knee while descending a stairway. TR. 40-43, 80, 91. He testified that he was working on the top port side deck when he was called by his supervisor, J.J. Valdez. TR. 35, 40-41. Mr. Candanoza testified that because Mr. Valdez was on the top starboard side deck, Mr. Candanoza would have to descend a 45 foot stairway on the port side, walk across the deck, and then ascend another 45 foot stairway on the starboard side in order to reach Mr. Valdez. TR. 40-42. He testified that while descending the stairway, he slipped and felt a pop in his left knee. TR. 42-43. He opined that the stairway might have been wet or slippery due to grease or some chemical agents. TR. 48.

Mr. Candanoza testified that he continued down the stairway to the lower deck, where he encountered Victor Rivas, a co-worker. TR. 43. Mr. Candanoza talked to Mr. Rivas about the incident. TR. 43. Mr. Candanoza testified that he then completed his trip to see Mr. Valdez and that he told Mr. Valdez that he had hurt himself in an accident. TR. 44. Mr. Candanoza testified that Mr. Valdez ignored him and did not allow him a pass to see the safety department. TR. 44, 49. According to Mr. Candanoza, his relationship with Mr. Valdez was troubled and Mr. Valdez treated him harshly and called him names. TR. 35-36.

Mr. Candanoza testified that when a worker is injured, a supervisor is supposed to give a permit for the worker to visit the safety department. TR. 49, 56. According to Mr. Candanoza, he needed such special authorization to go to the safety department. TR. 56. Mr. Candanoza testified that the Amfels safety policy is reviewed during orientation for new employees and at safety meetings about every six weeks. TR. 76-77. Mr. Candanoza understood that all injuries ultimately had to be reported to the Amfels safety department. TR. 78.

Mr. Candanoza testified that after this meeting with Mr. Valdez, it was quitting time. TR. 44, 50. He testified that he met Sammy Cosay and Victor Rivas after work at a stop-and-go market across the street from the Amfels shipyard. TR. 50. Mr. Candanoza told them about his accident. TR. 50. He testified that his knee did not begin hurting significantly until he had gotten home and taken a bath, after which time he experienced pain and swelling. TR. 50-51.

During the early morning hours of Friday, May 25th, Mr. Candanoza went to BMC for treatment, where x-rays were taken and he was given pain shots and a leg brace. TR. 51-52, 69-70, 96. Mr. Candanoza testified that the emergency room doctor examined him during his May 25th visit in the same fashion as his earlier May 8th visit. TR. 97. Despite the fact that his May 25th BMC medical records indicate that Mr. Candanoza hurt his knee while standing up, Mr. Candanoza maintained that he told the doctor he hurt his knee while going down the Amfels stairway. TR. 98-99.

Mr. Candanoza testified that he did not report his injury to the Amfels safety office the day he was injured. TR. 91. Instead, he called Port Fabricators the next morning to report his injury. TR. 52. He testified that he was instructed by Port Fabricators to talk to Mr. Read, the Amfels safety manager, on Monday, May 28th. TR. 53. According to Mr. Candanoza, he met with Mr. Read the morning of May 28th as instructed. TR. 53, 101. Mr. Candanoza testified that Rubin Vega, Amfels' assistant personnel manager, was in the safety department that day. TR. 53, 101. He testified that Mr. Read questioned why he did not report the accident the day he was injured and that Mr. Read did not believe he got really hurt. TR. 54. Mr. Candanoza testified that he was turned down for medical treatment and that he did not have any funds to pay for treatment. TR. 55.

Although he reported the injury the next day to Port Fabricators, Mr. Candanoza knew that he was supposed to report the injury to the Amfels safety department. TR. 95-96. Mr. Candanoza testified that he walked within 30 feet of the Amfels safety office when he left work everyday. TR. 92. He testified that there was nothing preventing him, on the day of his injury, from stopping in the safety office as he was leaving work. TR. 92. He did not do so however. TR. 92. Mr. Candanoza testified that he had reported other injuries to the Amfels safety office and that he knew he could report injuries while off-shift. TR. 93-94.

Mr. Candanoza acknowledged that there is always someone present at the safety office, even at night. TR. 94. Mr. Candanoza acknowledged that there was nothing stopping him from calling the Amfels safety department the night of his injury, after the swelling and pain had set in. TR. 94-95.

Mr. Candanoza testified that he talked to AIG claims services and was told his claim was under workers' compensation. TR. 58-59. He was told he could choose a doctor, and Mr. Candanoza chose Dr. Alberto Almeida. TR. 58-59. Mr. Candanoza saw Dr. Almeida from approximately August 29, 2001 until January 7, 2002. TR. 59-60. Dr. Almeida referred Mr. Candanoza for an MRI and therapy. TR. 60-61. According to Mr. Candanoza, neither Dr. Almeida's bills, the therapy bills, nor the MRI bill was ever paid. TR. 60-61.

Mr. Candanoza testified that after his injury, he never returned to work because his knee was not able to do so. TR. 56. Mr. Candanoza testified that he currently has problems with climbing, walking, and other everyday activities involving his knee. TR. 61-62. He testified that he has been working at Carino Adult Day Care for two to three months part-time as an attendant due to financial hardship. TR. 62, 102-03. His duties at the day care include taking care of elderly people, giving them food, and playing games with them. TR. 63. He earns \$5.15 per hour there. TR. 63. As to how many hours he worked, Mr. Candanoza's testimony varied. TR. 63, 103-04. He testified to 4 hours a day, 6 hours a day, 4 to 5 hours a week, and from 8 a.m. to 5 p.m. TR. 63, 103-04.

Victor Rivas

Mr. Rivas is a plate fitter at Amfels and has been employed there about 8½ years. TR. 108. Mr. Rivas testified that on May 24 or 25, 2001, he was walking near the dry dock stairways when he heard a noise. TR. 108. He looked up and saw Mr. Candanoza holding his knee, with an expression of pain on his face. TR. 109. Mr. Rivas did not see what caused Mr. Candanoza to be holding his knee. TR. 113. Mr. Rivas testified that when Mr. Candanoza got to the bottom of the stairs, Mr. Candanoza told him he had slipped. TR. 109. Mr. Rivas testified that he did not doubt Mr. Candanoza's explanation. TR. 117. He testified that before the incident, Mr. Candanoza appeared to be walking normally and was not having any problems doing his work. TR. 117.

According to Mr. Rivas, he told Mr. Candanoza to report the injury to the Amfels safety office. TR. 109, 114. Mr. Rivas testified that the usual procedure for reporting a work-injury is to get an authorization slip before going to the safety office, unless the injured employee is immobilized. TR. 110. Mr. Rivas testified that after their conversation, Mr. Candanoza proceeded up the starboard side stairway to see Mr. Valdez, but Mr. Rivas was not present when Mr. Candanoza supposedly reported the injury to Mr. Valdez. TR. 110.

Mr. Rivas testified that Mr. Candanoza told him afterward that Mr. Valdez had not authorized him to go to the safety office. TR. 110.

Mr. Rivas testified that Amfels' safety policy requires anyone injured to report the accident to the safety department. TR. 114. He also testified that he and other workers walked past the safety office that day when leaving work. TR. 114.

Samuel Cosay

Mr. Cosay is an employee of Amfels and was employed as a deckhand in May 2001. TR. 120. Mr. Cosay worked in the same crew as Mr. Candanoza. TR. 120. Mr. Cosay testified that the day of the alleged slip, Mr. Valdez was giving Mr. Candanoza a hard time with extra chores at work because of personal problems they had with each other. TR. 123-24. During a conversation after work on the day of the alleged slip, Mr. Cosay testified that Mr. Candanoza told him Mr. Candanoza had gotten hurt while going down some steps. TR. 121.

Mr. Cosay testified that when an employee has an accident at Amfels, that employee is supposed to report the incident to his supervisor, who will then send the injured employee to the safety department. TR. 124. Mr. Cosay testified that an authorization slip is proper for minor problems but that the injured employee is given more immediate help in major incidents. TR. 124-25. Mr. Cosay testified however that a slip is not necessarily needed and that someone going to the safety office would probably not get in trouble if stopped without a slip. TR. 127.

Mr. Cosay testified that Mr. Candanoza had told him Mr. Candanoza was in a car accident and had hurt his knee. TR. 126-28. Mr. Cosay testified that Mr. Candanoza did not appear to have problems performing his job the day the alleged slip occurred. TR. 126-27.

James Read

Mr. Read is the Safety Manager at the Amfels Shipyard. TR. 130. He has held that position for the past 8½ years. TR. 130. He testified that an employee who is injured on the job at Amfels is supposed to report the injury to Amfels and that Amfels employees and Port Fabricators employees are not treated any differently as far as the safety department is concerned. TR. 132, 136-37. Mr. Read testified that Port Fabricators is an employee leasing company are in the Amfels shipyard. TR. 137. Mr. Read testified that Port Fabricators employees are required to follow Amfels' safety regulations when they are in the Amfels yard, including the Amfels policy on reporting injuries. TR. 137.

Mr. Read testified that an accident report is filled out in the safety department for any injury that requires treatment exceeding minor first aid. TR. 131. His examples of minor first aid were a small scrape, a very minor laceration, and a small bruise. TR. 131. Mr. Read testified that if medical treatment is needed from a doctor, further paperwork is completed. TR. 131. Mr. Read testified that an accident report is filled out, even for incidents that are not anticipated to result in lost time, in order to make a record of the accident and to create a report for future reference. TR. 131. Mr. Read testified that it is not acceptable for an employee to report his injury to his supervisor because the supervisor has no way of recording it or providing prompt medical treatment. TR. 143. Mr. Read testified that an average of 60 to 70 people come to the safety office each week to report an injury, to receive minor first aid, and for medicine. TR. 146-47.

Mr. Read testified that the safety office also keeps a first aid log, as a record of office visits involving minor first aid. TR. 132. He explained that there is no indication in the first aid log that Mr. Candanoza reported an injury on either May 24 or 25, 2001. TR. 133-34; RX-2. As explained by Mr. Read, the first aid log indicates that on April 23, 2001, Mr. Candanoza reported pain in his lower back off-shift. TR. 134. Mr. Read explained that a report "off-shift" means that an employee returned to work from home to report an injury. TR. 134. Mr. Read testified that employees are encouraged in safety meetings to report injuries off-shift. TR. 134-35.

Mr. Read testified that a safety meeting document dated March 13, 2001 indicated that one of the topics covered at the meeting was the reporting of injuries. TR. 135. Mr. Read indicated that the document was signed by Mr. Candanoza. TR. 135; RX-9. Mr. Read testified that the reporting of injuries is covered at safety meetings every four to six weeks as a reminder that all injuries, regardless of how minor they are, must be reported. TR. 135-36.

Mr. Read testified that while it would not be wrong for Mr. Candanoza to report his injury to his supervisor first, Amfels does not require an authorization slip in order to report injuries to the safety department. TR. 136, 143-44. According to Mr. Read, an authorization slip is required only when an employee is seeking medicine, such as Tylenol. TR. 136, 143-44. Mr. Read testified that this policy is communicated at safety meetings. TR. 136.

Mr. Read did not dispute that Mr. Candanoza had presented a medical return-to-work authorization to the safety department on May 21, 2001. TR. 145. Mr. Read testified that an injured employee presents a medical release to the safety department when returning to work from an off-the-job injury. TR. 137. He testified that the Amfels human resources department has no involvement in returning the injured employee to work. TR. 137. Mr. Read was not aware of any employee with a return to work release being sent from the safety

office to the human resources department. TR. 138. Mr. Read testified that the safety department relies on the doctor's information on the return-to-work slip and does not do any independent testing to verify that an employee can return to work. TR. 138. Mr. Read was very doubtful that Mr. Candanoza went to see Mr. Elizondo, the Amfels vice president of human resources, when Mr. Candanoza returned to work on May 21, 2001. TR. 145.

Mr. Read further testified that Mr. Candanoza did not meet with him and Mr. Vega in the safety office on May 28, 2001. TR. 141, 149. Mr. Read testified that Rubin Vega is the Amfels assistant personnel manager and that Mr. Vega has no responsibilities at all concerning employee injuries. TR. 142. Mr. Read testified that Mr. Vega has never been in a meeting with Mr. Read and an employee alleging an injury. TR. 142, 145. According to Mr. Read, Mr. Vega has been in Mr. Read's office maybe twice the entire time Mr. Vega has been with Amfels. TR. 145-46. Mr. Read testified that he does not deal with the Amfels personnel department on issues relating to injured employees. TR. 142. Instead, Mr. Read would report to Amfels' CEO if such issues arose. TR. 142.

Mr. Read testified that filling out an accident report is the first thing he does when a person reports an injury. TR. 141. Mr. Read explained that doing so is his policy and he does it every time. TR. 141. Mr. Read testified that he fills out an accident report and LS-202 for all injuries, even if he has doubts about the alleged injury, because of the Department of Labor's notice and penalty provisions. TR. 142-43. Mr. Read opined that Mr. Candanoza's alleged slip never happened because there was no accident report for the incident. TR. 141.

Mr. Read testified that LS-202s for Port Fabricators employees are filled out by a representative of Port Fabricators who works in conjunction with the secretary of the Amfels safety department. TR. 140. The LS-202 for Mr. Candanoza's left knee injury indicates that the alleged injury became known of on July 8, 2001 through a call from an attorney. TR. 140. Mr. Read testified that, prior to early July, he was unaware that Mr. Candanoza was claiming an on-the-job injury at Amfels. TR. 140-41.

With respect to Mr. Candanoza's case, Mr. Read testified that he tried to determine whether an accident had occurred. TR. 149. He checked all the records in the safety department. TR. 149. Mr. Read testified that he never spoke to Mr. Rivas or Mr. Cosay about the alleged accident, nor does he recall reading their affidavits. TR. 155. The day of the hearing was the first time Mr. Read learned that Mr. Rivas or Mr. Cosay had any knowledge of the accident. TR. 155.

2. MEDICAL EVIDENCE: Reports

Brownsville Medical Center Records

Mr. Candanoza's medical records from Brownsville Medical Center on May 8, 2001 indicate that his chief complaint was left knee pain. RX-3, pp. 7, 10-11. According to the records, Mr. Candanoza reported that he twisted his left knee while walking. RX-3, pp. 7, 9. X-rays of his left knee revealed soft tissue swelling about the left knee with no fractures or dislocation demonstrated, with an indication of mild condylar malacia posterior to the patella. RX-3, p. 12. Mr. Candanoza was diagnosed with a left knee sprain. RX-3, pp. 1, 8. He was given medication, fitted with a knee immobilizer, and instructed to follow up with an orthopedic physician. RX-3, pp. 8, 13; CX-3A. He was also given a slip to be off work from May 8, 2001 through May 11, 2001. CX-3A(a). Mr. Candanoza was authorized to return to work on May 12, 2001. CX-3A(a).

On May 17, 2001, Mr. Candanoza was given a second medical work slip, authorizing him to return to work on May 21, 2001. CX-3B.

Mr. Candanoza's medical records from Brownsville Medical Center on May 25, 2001 indicate that his chief complaint was left knee pain. RX-4, p. 9; CX-3C(c). The records indicate that the onset of Mr. Candanoza's symptoms occurred 2 weeks prior to the May 25th visit and that the worsening of his symptoms occurred that night. RX-4, p. 9; CX-3C(c). The records indicate that Mr. Candanoza twisted his knee that day at work while standing up and that he had fallen on his right knee two weeks prior. RX-4, p. 9; CX-3C(c). Mr. Candanoza reported hearing a "popping" sound in his left knee. RX-4, p. 7; CX-3C(a). He was put on crutches and ordered to follow up with an orthopedic physician. RX-4, pp. 8, 17; CX-3C(b).

Dr. Alberto E. Almeida

Mr. Candanoza was treated by Dr. Alberto E. Almeida for his left knee pain. CX-3D-3D(jj). Dr. Almeida reported that Mr. Candanoza injured his left knee at work while going down a ladder. RX-5. Dr. Almeida diagnosed him with left knee pain, including a medial meniscus tear and partial ACL tear. CX-3D-3d(jj).

October 29, 2001 MRI

Mr. Candanoza underwent an MRI on his left knee on October 29, 2001. CX-3E. The results were (1) a partial intrasubstance tear on the posterior horn of the medial mensicus; (2) a partial tear of the anterior cruciate ligaments; and (3) joint effusion. CX-3E.

Andrew T. Reed, P.T.

Mr. Candanoza was referred to Andrew T. Reed by Dr. Almeida for physical therapy. CX-3F-3F(a). In a September 4, 2001 report, it is noted that Mr. Candanoza was injured on May 25, 2001 at work when he felt a pop in his left knee while stepping down a ladder. CX-3F. During his several visits with Mr. Reed, Mr. Candanoza was treated with moist heat with Interferential Stimulation. CX-3F(a)-(l). In Mr. Reed's discharge note, it is indicated that Mr. Candanoza made some improvement with physical therapy but still had complaints of pain, including moderate to severe pain while walking. CX-3F(m).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The following findings of fact and conclusions of law are based upon the Court's observations of the credibility of the witnesses, and upon an analysis of the medical records, applicable regulations, statutes, case law, and arguments of the parties. As the trier of fact, this Court may accept or reject all or any part of the evidence, including that of expert medical witnesses, and rely on its own judgment to resolve factual disputes and conflicts in the evidence. See Todd Shipyards v. Donovan, 300 F.2d 741 (5th Cir. 1962). In evaluating the evidence and reaching a decision, this Court applies the principle, enunciated in Director, OWCP v. Greenwich Collieries, 114 S.Ct. 2251 (1994), that the burden of persuasion is with the proponent of the rule. The "true doubt" rule, which resolves conflicts in favor of the claimant when the evidence is balanced, will not be applied, because it violates § 556(d) of the Administrative Procedure Act. See Director, OWCP v. Greenwich Collieries, 512 U.S. 267, 281, 114 S.Ct. 2251, 2259, 129 L.Ed. 2d 221 (1994).

JURISDICTION AND COVERAGE

This dispute is before the Court pursuant to 33 U.S.C. § 919(d) and 5 U.S.C. § 554, by way of 20 C.F.R §§ 702.331 and 702.332. See Maine v. Brady-Hamilton Stevedore Co., 18 BRBS 129, 131 (1986).

In order to demonstrate coverage under the Longshore and Harbor Workers' Compensation Act, a worker must satisfy both a situs and a status test. Herb's Welding, Inc. v. Gray, 470 U.S. 414, 415-16, 105 S.Ct. 1421, 1423, 84 L.Ed. 2d 406 (1985); P.C. Pfeiffer Co. v. Ford, 444 U.S. 69, 73, 100 S.Ct. 328, 332, 62 L.Ed. 2d 225 (1979). The situs test limits the geographic coverage of the LHWCA, while the status test is an occupational concept that focuses on the nature of the worker's activities. Bienvenu v. Texaco, Inc., 164 F.3d 901, 904 (5th Cir. 1999); P.C. Pfeiffer Co., 444 U.S. at 78, 100 S.Ct. at 334-35, 62 L.Ed. 2d 225.

The situs test originates from § 3(a) of the LHWCA, 33 U.S.C. § 903(a), and the status test originates from § 2(3), 33 U.S.C. § 902(3). See P.C. Pfeiffer Co., 444 U.S. at 73-74, 100 S.Ct. at 332, 62 L.Ed. 2d 225. With respect to the situs requirement, § 3(a) states that the LHWCA provides compensation for a worker whose “disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).” Id. With respect to the status requirement, § 2(3) defines an “employee” as “any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker” Id. To be eligible for compensation, a person must be an employee as defined by § 2(3) who sustains an injury on the situs defined by § 3(a). Id.

In this case, the parties do not contest jurisdiction under the Act. Mr. Candanoza was a Port Fabricators employee who worked as a welder helper and maintenance worker at the Amfels shipyard. TR. 19-22, 35, 37-38. In addition, Mr. Candanoza asserts that his injury occurred while descending a stairway at the Amfels shipyard. TR. 26; JX-2, p. 53. Therefore, the Court finds that jurisdiction under the Act is proper for this case.

FACT OF INJURY AND CAUSATION

The claimant has the burden of establishing a *prima facie* case of compensability. He must demonstrate that he sustained a physical and/or mental harm and prove that working conditions existed, or an accident occurred, which could have caused the harm. Graham v. Newport News Shipbuilding & Dry Dock Co., 13 BRBS 336, 338 (1981); U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP, 455 U.S. 608, 616, 102 S.Ct. 1312, 1318, 71 L.Ed. 2d 495 (1982). Once the claimant establishes these two elements of his *prima facie* case, § 20(a) of the Act provides him with a presumption that links the harm suffered with the claimant’s employment. See Kelaita v. Triple A Machine Shop, 13 BRBS 326 (1981); Hampton v. Bethlehem Steel Corp., 24 BRBS 141, 143 (1990).

1. Claimant's Showing of a Harm

The first prong of a claimant's *prima facie* case requires him to establish the existence of a physical harm or injury. Section 2(2) of the Act, 33 U.S.C. § 902(2), defines an injury as the following:

accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

An accidental injury occurs when something unexpectedly goes wrong within the human frame. See Wheatley v. Adler, 407 F.2d 307, 311 (D.C. Cir. 1968). Additionally, an injury need not involve an unusual strain or stress, and it makes no difference that the same kind of injury might have occurred regardless of the employee's location. See id. The claimant's uncontradicted credible testimony may alone constitute sufficient proof of physical injury. Hampton v. Bethlehem Steel Corp., 24 BRBS 141 (1990); Golden v. Eller & Co., 8 BRBS 846 (1978), aff'd, 620 F.2d 71 (5th Cir. 1980).

In this case, Mr. Candanoza has established the existence of a physical harm. The medical evidence in this case supports such a finding. The records of BMC and Dr. Almeida, as well as Mr. Candanoza's MRI results and the reports of Mr. Reed, indicate that an injury occurred to Mr. Candanoza's left knee. RX-3; RX-4; CX-3A-3F(m). Therefore, Mr. Candanoza has met the first prong for establishing a *prima facie* case of compensability.

2. Claimant's Showing of a Work Accident or Working Conditions

In order to invoke the § 20(a) presumption, a claimant must also show the occurrence of an accident or the existence of working conditions which could have caused the harm. The § 20(a) presumption does not assist the claimant in establishing the existence of a work-related accident or working conditions that could have caused the harm. See Mock v. Newport News Shipbuilding & Dry Dock Co., 14 BRBS 275 (1981). Therefore, the claimant must make such a showing by a preponderance of the evidence.

In this case, the Court finds that Mr. Candanoza has established the existence of working conditions that might have caused his left knee injury. Mr. Candanoza testified that his work at Amfels required him to ascend and descend stairways about 45 feet high. TR. 34. In addition, Mr. Candanoza testified that on the day he was injured, he was required to

ascend and descend the stairways in order to meet with J.J. Valdez, his supervisor. TR. 40-43. Mr. Candanoza testified that he injured his left knee when he slipped while going down one of the stairways. TR. 43. James Read, the Amfels safety manager, confirmed the existence of the stairways. TR. 154; see also RX-8; CX-7C; CX-7D. Mr. Read testified that the stairway where the injury allegedly occurred was 43 feet high. TR. 154. Based on the foregoing, the Court finds that the stairway is a working condition that could have caused Mr. Candanoza's left knee injury.

3. Employer's Rebuttal Evidence

After the § 20(a) presumption has been established, the employer must introduce "substantial evidence" to rebut the presumption of compensability and show that the claim is not one "arising out of or in the course of employment." 33 U.S.C. §§ 902(2), 903. Only after the employer offers substantial evidence does the presumption disappear. Del Vecchio v. Bowers, 296 U.S. 280, 286, 56 S.Ct. 190, 193 (1935). Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept to support a conclusion. Sprague v. Director, OWCP, 688 F.2d 862, 865 (1st Cir. 1982). If the employer meets its burden, the presumption disappears, and the issue of causation must be resolved based upon the evidence as a whole. Kier v. Bethlehem Steel Corp. 16 BRBS 128, 129 (1984); Devine v. Atlantic Container Lines, G.I.E., 25 BRBS 15, 21 (1991).

The Court finds that the § 20(a) presumption has been successfully rebutted in this case. First, there is evidence that Mr. Candanoza had injured his left knee in a car accident on May 8, 2001, about two weeks before his alleged slip on the stairway. TR. 64-66, 72-75; RX-3; CX-3A. In addition, the May 25, 2001 BMC medical records indicate that Mr. Candanoza's knee symptoms had begun two weeks prior to his alleged May 25th slip. RX-4, p. 9; CX-3C(c). Given the evidence of a prior car accident and the evidence of pre-existing symptoms in Mr. Candanoza's left knee, the Court finds that there is substantial rebuttal evidence that Mr. Candanoza's left knee injury is not employment-related.

Second, Mr. Candanoza did not report his accident to Amfels the day he was injured, despite his knowledge that all injuries must be reported to the Amfels safety department immediately. TR. 91-96. Although he testified to reporting the injury to Port Fabricators the next day, there is no documentation that such a reporting ever occurred. Likewise, there is no record that Mr. Candanoza reported the injury to the Amfels safety office on May 28, 2001, as claimed by him. Although the alleged slip occurred on May 24 or 25, 2001, there is no documented reporting of the accident until July 8, 2001. TR. 139-40; RX-1, pp. 56-58.

Third, although Mr. Rivas testified that he saw Mr. Candanoza on the stairway holding his knee in pain, there were no witnesses to the actual accident. TR. 108-09, 113. The testimony of both Mr. Rivas and Mr. Cosay regarding the accident was predicated on

what they were told by Mr. Candanoza. TR. 109, 113, 121.

Fourth, the Court questions the credibility of Mr. Candanoza. In several instances, Mr. Candanoza's testimony was in contradiction with the medical records of BMC. In other instances, his testimony was not logically consistent. For example, Mr. Candanoza testified that he did not injure his left knee in the May 8, 2001 car accident. TR. 73-74, 80-81. However, the May 8th BMC medical records indicate that his chief complaint was left knee pain and that he was diagnosed with a left knee sprain. RX-3, pp. 1, 7-8, 10-11. In addition, contrary to Mr. Candanoza's testimony that his May 8th problems were resolved when he returned to work on May 14th, the May 25th BMC records indicate that the symptoms Mr. Candanoza experienced in his left knee on May 25th were two weeks old. RX-4, p. 9; CX-3C(c). Furthermore, the Court finds there is logical inconsistency between Mr. Candanoza's testimony that he did not report his injury to the safety department because he did not have an authorization slip and Mr. Candanoza's testimony that he walked past the safety department when he left work without reporting his injury. TR. 49, 56, 92. Because Mr. Candanoza had the opportunity to report his injury when leaving work that day, the fact that he was not given an authorization slip should have been of no significance to preventing him from visiting the safety department. Because Mr. Candanoza's testimony is replete with inconsistencies, because his knee injury may have fully resulted from a car accident, and because there is no independent evidence that a work-accident even occurred, the Court finds that the § 20(a) causation presumption has been successfully rebutted.

4. Causation Based on the Evidence as a Whole

Because Port Fabricators has successfully rebutted the § 20(a) presumption, the issue of causation must be resolved based on the evidence as a whole. The Court finds that the evidence as a whole weighs in favor of finding that Mr. Candanoza's left knee injury was not caused by his employment. First, there is no affirmative medical determination in this case as to the nature of the injury-causing event. The May 25th BMC records report that Mr. Candanoza hurt his knee while standing up. RX-4, p. 9; CX-3C(c). The records of Dr. Almeida and Mr. Reed, which were formulated beginning in August 2001, report that Mr. Candanoza hurt his knee while descending the Amfels stairway. RX-5; CX-3F. However, neither the May 25th BMC records nor the records of Dr. Almeida and Mr. Reed contain a medical determination as to whether the knee injury was consistent with the alleged type of trauma nor the types of trauma that could have caused the knee injury. RX-4; RX-5; CX-3F. In addition, Mr. Candanoza testified that he hurt his leg on May 8th in the car accident. TR. 64, 72. However, the May 8th BMC records report that Mr. Candanoza hurt his left knee while walking. RX-3, pp. 7, 9. Based on the foregoing, the Court finds that Mr. Candanoza's left knee pains were not necessarily caused by a slip on a stairway, but instead could have stemmed from other possible causes. Therefore, the Court cannot rule out that Mr. Candanoza's left knee injury resulted from a non-industrial cause.

Second, this case contains a plausible non-industrial cause for Mr. Candanoza's left knee injury, namely the May 8th car accident. Although Mr. Candanoza denied that he injured his left knee in the car accident, the May 8th BMC medical records indicate that he suffered a left knee sprain. RX-3, pp. 1,8. After going to work Monday, May 14th, through Wednesday, May 16th, Mr. Candanoza did not work May 17th and 18th. TR. 67-68, 87-89. Even if the Court accepts that Mr. Candanoza missed work on May 17th for a check-up at BMC, as testified to by him, Mr. Candanoza testified that the doctor did not want him to work Friday, May 18th. TR. 88-89. The fact that Mr. Candanoza was medically unfit to complete that week of work indicates to the Court that, contrary to Mr. Candanoza's testimony, Mr. Candanoza's left knee sprain from the car accident had not yet resolved.

Mr. Candanoza returned to work on Monday, May 21st, but did not complete that work week either. TR. 37, 39-40, 90. His alleged slip occurred most probably on Thursday, May 24th, and resulted in an early morning visit to BMC on May 25th.³ TR. 90-91; RX-4; RX-6. Accepting that Mr. Candanoza sprained his left knee on May 8th in accordance with the BMC diagnosis, the alleged slip of Mr. Candanoza on May 24th or 25th resulted in a similar injury that same knee. RX-3; RX-4. In fact, the May 25th BMC medical records indicate that the onset of Mr. Candanoza's left knee symptoms occurred two weeks prior to his examination on May 25th. RX-4, p. 9; CX-3C(c). The Court finds that this two-week symptom notation likely was a reference to Mr. Candanoza's original May 8th left knee sprain and that the notation was either based on Mr. Candanoza's report to the doctor or the doctor's own medical determination. Whether Mr. Candanoza himself reported that he had experienced symptoms for two weeks or whether the doctor linked his May 25th symptoms to an earlier event, the Court finds the two-week symptom notation meaningful and persuasive. Based on the foregoing, the Court finds that the evidence weighs in favor of finding that the knee problems Mr. Candanoza experienced from the car accident had not resolved by the time of his alleged slip.

Third, the Court has credibility concerns regarding Mr. Candanoza's testimony. The evaluation of witnesses' credibility, including that of medical witnesses, is for the trier of fact. Darcell v. FMC Corp., 14 BRBS 294, 296 (1981). As previously stated, the Court may accept or reject all or any part of the evidence, including that of expert medical witnesses,

³ Mr. Candanoza testified that he did not remember exactly whether his alleged slip occurred on May 24th or May 25th. TR. 90-91. According to Amfels records, Mr. Candanoza did not work on May 25th. RX-6. In addition, the records of BMC indicate that Mr. Candanoza was examined at about 2 a.m. to 3 a.m. on May 25th. RX-4. Based on the records of Amfels and BMC, it is evident to the Court that any alleged injury would have occurred during Mr. Candanoza's work shift on May 24th, for which he was examined at BMC in the early morning hours of May 25th.

and rely on its own judgment to resolve factual disputes and conflicts in the evidence. See Todd Shipyards v. Donovan, 300 F.2d 741 (5th Cir. 1962). In this case, Mr. Candanoza's testimony contains inconsistencies that create doubt as to the veracity and reliability of his testimony. Based on those inconsistencies, the Court finds that Mr. Candanoza's testimony is not credible and should be afforded little weight, if any.

For instance, Mr. Candanoza testified that he did not hurt his left knee in the May 8th car accident. TR. 73-74, 80-81. However, the May 8th BMC medical records indicate that his chief complaint was left knee pain and that he had suffered a left knee sprain. RX-3, pp. 1, 7-8, 10-11. Even when confronted with the May 8th BMC records, Mr. Candanoza maintained that his left knee had not been hurt in the car accident. TR. 82-85. In addition, aside from the fact that the May 8th records indicate he had hurt his left knee, Mr. Candanoza testified that he was fitted with a left knee immobilizer. TR. 86. Therefore, any misunderstanding he might have had about the BMC diagnosis would not be reasonable given the fact that he was made to wear a left knee brace. Furthermore, Mr. Cosay testified that he was told by Mr. Candanoza that Mr. Candanoza had hurt his left knee in the car accident. TR. 126-28. Given the foregoing, the Court finds that Mr. Candanoza was not forthright about his injuries from the car accident.

In another instance, Mr. Candanoza admitted that he lied to BMC regarding how he was injured on May 8th. TR. 82-85. Mr. Candanoza admitted that he told BMC that he twisted his knee while walking, although he had really been injured in a car accident. TR. 82-85. Likewise, Mr. Candanoza's testimony and the May 25th BMC records conflict as to how his knee was injured that day. Mr. Candanoza testified that he injured his knee while walking down a stairway at Amfels. TR. 40-43, 80, 91. However, the May 25th BMC records indicate that Mr. Candanoza hurt his knee while standing up. RX-4, p. 9; CX-3C(c). These discrepancies regarding the cause of his injuries are of particular concern to the Court because causation is the critical issue in this case.

Also, Mr. Candanoza denied that his May 8th injury was still bothering him when he went back to work on Monday, May 14th. TR. 69, 87-89. However, on Thursday, May 17th, Mr. Candanoza returned to BMC and received a medical note to be off work until May 21st. TR. 36-37, 68, 88-89. Mr. Candanoza testified that the doctor did not want him to work that Friday, May 18th. TR. 89. That medical opinion indicates to the Court that Mr. Candanoza's May 8th injury was still problematic, contrary to Mr. Candanoza's testimony. In addition, according to the May 25th BMC records, Mr. Candanoza's May 25th knee symptoms were two weeks old, which indicates to the Court that his left knee symptoms on May 25th were related to his left knee injury on May 8th. RX-4, p. 9; CX-3C(c). Also, on May 8th, Mr. Candanoza was instructed to follow up with an orthopedic surgeon. TR. 86; RX-3, pp. 8, 13. Mr. Candanoza did not do so. TR. 87. The fact that he did not complete his care as instructed creates additional doubt as to whether his left knee had fully healed

before he returned to work. Given the contradictory evidence, the Court finds that Mr. Candanoza was not forthright about the extent and duration of his May 8th injury.

Furthermore, much of Mr. Candanoza's testimony concerning the reporting of his alleged work-accident was contradicted by Mr. Read's testimony and Amfels' records. First, Mr. Candanoza testified that he reported the alleged work-accident on May 28th to Mr. Read and that Rubin Vega, Amfels' assistant personnel manager, was present in the office. TR. 53, 101. Mr. Read denied that such a meeting ever occurred and testified that Mr. Vega had no responsibilities whatsoever with respect to injured employees. TR. 141-42, 149. According to Mr. Read, Mr. Vega has been in Mr. Read's office only about two times during Mr. Vega's employment at Amfels. TR. 145-46. Mr. Read also testified that filling out an accident report is the first thing he does each and every time an employee reports an injury. TR. 141. Mr. Read testified that he does so even if he has doubts about the alleged injury in order to create a record of the accident and to comply with the Department of Labor's notice and penalty regulations. TR. 131-34, 142-43. The Court finds Mr. Read's testimony credible. His testimony is supported by the fact that Amfels had neither an accident report nor an entry its first aid log regarding Mr. Candanoza's alleged slip. TR. 133-34, 141; RX-2.

Mr. Candanoza was aware that all Amfels work-accidents had to be reported to the Amfels safety department. TR. 78, 95-96. He acknowledged that Amfels' reporting policy is reviewed every four to six weeks during safety meetings. TR. 76-77. Mr. Candanoza had in fact reported injuries to Amfels safety department in the past. TR. 93-94. Included in his prior reported injuries was an injury to his back that he reported "off-shift" on April 23, 2001, just weeks prior to the alleged May 24th or 25th incident. TR. 93-94; RX-2. Moreover, with respect to the alleged work-accident in this case, Mr. Rivas testified that he reminded Mr. Candanoza to report the injury to the Amfels safety department. TR. 109, 114. Although Mr. Candanoza was aware of the Amfels policy, Mr. Candanoza testified that he did not report his injury the day of the alleged slip, despite walking within 30 feet of the Amfels safety office when leaving work that day. TR. 91-92. Mr. Candanoza also did not call the Amfels safety department off-shift to report the alleged work-accident, even though he began experiencing pain and swelling. TR. 94-95. Mr. Candanoza testified that he called Port Fabricators the next day to report the injury, even though Mr. Candanoza knew that the place to report such an injury was the Amfels safety department. TR. 52, 95-96. Finally, even according to Mr. Candanoza's version of events, he did not report the work-accident to the Amfels safety department until May 28th, even though he knew that such accidents must be reported immediately. TR. 53, 78, 101. The suspect manner in which Mr. Candanoza handled the reporting of his alleged injury supports our finding that Mr. Candanoza's testimony is not credible. Given his suspect reporting measures and the many inconsistencies in his testimony as detailed above, the Court finds that Mr. Candanoza's testimony is not credible and should be afforded little weight, if any.

Fourth, Mr. Candanoza's stairway slip cannot be independently verified. The only evidence that such a slip in fact occurred is Mr. Candanoza's own testimony. Although Mr. Rivas testified that he saw Mr. Candanoza on the stairway holding his knee in pain, Mr. Rivas did not see Mr. Candanoza's alleged accident. TR. 113. Furthermore, despite the fact that Mr. Rivas had no doubt that Mr. Candanoza did slip as Mr. Candanoza said, Mr. Rivas' testimony regarding the slip is predicated on what he was told by Mr. Candanoza. TR. 109, 117. The same is true for Mr. Cosay, who was told of the accident in an after-work conversation with Mr. Candanoza. TR. 121.

In addition, despite Amfels' accident reporting policies, there was no documentation of any May 24th or 25th work-accident until early July, when an LS-202 was completed based on an attorney's phone call. TR. 140-41; RX-1, p. 56. Although Mr. Candanoza testified that he did indeed report the injury, the Court is not persuaded that any such reporting ever occurred. On the contrary, as detailed above, the Court has serious doubts about the manner in which Mr. Candanoza allegedly reported his work-accident. As discussed earlier, the Court has credibility concerns with Mr. Candanoza's testimony, including his testimony regarding the reporting of his alleged work-accident. Furthermore, aside from the fact that his measures were suspect to begin with, Mr. Candanoza's testimony concerning his reporting was contradicted by Mr. Read's testimony and Amfels' safety records. Given our credibility concerns regarding Mr. Candanoza, Mr. Candanoza's suspect reporting measures in this case, the testimony of Mr. Read, and the fact that there is no record of any reporting by Mr. Candanoza of the alleged slip, the Court finds that Mr. Candanoza did not report the work-accident until an attorney on his behalf gave notice of the alleged work-accident in early July. Our finding regarding Mr. Candanoza's failure to report the work-accident supports a determination that such a work-accident never occurred.

In sum, we find that Mr. Candanoza's car accident, both as a matter of its timing and the nature of the resulting injury, is a very plausible non-industrial cause for his current left knee pains. Additionally, the only evidence that the alleged May 24th or 25th work-accident in fact occurred is Mr. Candanoza's own testimony. The Court has found that Mr. Candanoza's testimony is not credible and should be afforded little weight. The fact that Mr. Candanoza was not forthright about the injury to his left knee after the car accident, the discrepancies between his testimony and the BMC records regarding the causes of his May 8th and May 25th pains, and Mr. Candanoza's suspect reporting measures in this case persuade the Court that Mr. Candanoza's testimony regarding the occurrence of the work-accident is not reliable and cannot be trusted. Given the foregoing, the Court finds that Mr. Candanoza did not suffer a work-related accident on May 24th or 25th and that his left knee injury is not related to his employment, but instead to a non-industrial cause such as the May 8th car accident.

Accordingly,

ORDER

It is hereby **ORDERED, ADJUDGED AND DECREED** that Claimant's claim for benefits is **DENIED**.

So ORDERED.

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RICHARD D. MILLS
Administrative Law Judge